

### **REMARKS/ARGUMENTS**

Claims 1-3, 10-13, 37, 39-41, 47-54 are now pending in this application. Claims 1, 37 and 51 are independent claims. Claims 51-54 are newly added. Independent Claims 1 and 37 have been amended. Support for the claim amendments and newly added claims is found throughout the specification of the present application as originally filed, for example from page 5, paragraph 0012 through page 6, paragraph 0013, page 9, paragraph 0021 and in FIGS. 1-6. Claims 4-9, 14-36, 38 and 42-46 have been cancelled without prejudice.

#### ***Claim Rejections – 35 USC § 112, 1st Paragraph***

Claims 4-9 and 42-46 were rejected under 35 U.S.C. § 112, 1<sup>st</sup> Paragraph. Claims 4-9 and 42-46 have been cancelled without prejudice, thereby obviating the rejections under this section.

#### ***Claim Rejections – 35 USC § 102***

Claims 1-4, 8, 10-13, 37, 39-42, and 47-50 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Chen, United States Patent Number: 6,431,428 (hereinafter: Chen). Applicants respectfully traverse these rejections.

Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration. *W.L. Gore & Assocs. v. Garlock*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). Further, “anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.” *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added).

Independent claims 1, 37 and 51 each include elements that have not been disclosed by Chen. For example, Claims 1, 37 and 51 of the present application each generally recite an articulating pusher assembly for use in a nail loading assembly of a nail gun, including an articulating pusher, wherein:

*“the articulating pusher is enabled to pivot upon contacting a nail to fully engage the nail.”*

The Examiner cited Chen as teaching an articulating pusher (Chen, structure 32) which is enabled to pivot to fully engage a nail as claimed in the present application. (Office Action, Page 3). However, the purported articulating pusher of Chen is *not* enabled to pivot *upon contacting a nail* to fully engage the nail. In the present invention, the articulating pusher pivots upon contacting a nail to fully engage the nail. (Present Application, Page 9, Paragraph 0021, FIGS. 5 and 6). In Chen, a user must manually position and lock the purported pusher in place in order to establish the pusher at a desired angle for enabling full engagement with a strip of nails. (Chen, Column 3, Lines 20-26). Therefore the purported pusher of Chen does *not* pivot *upon contacting a nail* to fully engage with the nail. Therefore Chen does not teach an articulating pusher as claimed in independent Claims 1, 37 and 51 of the present application.

Therefore, based on the above rationale, it is contended that Chen does not teach, suggest, or disclose the above-referenced elements of Claims 1, 37 and 51 of the present application. Under *Lindemann*, a prima facie case of anticipation has not been established for Claims 1, 37 and 51. Thus, independent Claims 1, 37 and 51 should be allowed. Dependent Claims 2, 3, 10-13 and 52 (which depend on independent Claim 1), dependent Claims 39-41, 47-50 and 53 (which depend on independent Claim 37) and dependent claim 54 (which depends on independent Claim 51) should also be allowed. Claims 4, 8, and 42 have been cancelled without prejudice.

### ***Claim Rejections – 35 USC § 103***

Claims 5, 7, 9 and 43-46 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Chen in view of Pomernacki, United States Patent Number: 3,661,312 (hereinafter: Pomernacki). Claim 6 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Chen in view of Grikis et al., United States Patent Number: 4,389,012 (hereinafter: Grikis). Claims 5-7, 9 and 43-46 have been cancelled without prejudice, thereby obviating the rejections under this section.


**CONCLUSION**

In light of the forgoing, reconsideration and allowance of the pending claims is earnestly solicited.

Respectfully submitted on behalf of

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